



Entered on Docket
January 31, 2008

A handwritten signature in black ink, appearing to read "Mike K. Nakagawa".

Hon. Mike K. Nakagawa
United States Bankruptcy Judge

Fennemore Craig, P.C.
Laurel E. Davis (NV Bar No. 3005)
Daniel W. Glasser (NV Bar No. 6990)
Jon T. Pearson (NV Bar No. 10182)
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Email: ldavis@fclaw.com

[Proposed] Counsel for Debtor and Debtor in
Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

XYIENCE INCORPORATED,
a Nevada corporation,

Involuntary Debtor.

Chapter 11 [Involuntary]

No. BK-S-08-10049-mkn

STIPULATION AND ORDER DISMISSING INVOLUNTARY
CHAPTER 11 PETITION, WITH PREJUDICE
AND REGARDING PETITION DATE FOR AVOIDANCE ACTIONS
IN VOLUNTARY CASE

1 WHEREAS, on January 3, 2008, the Petitioning Creditors filed an involuntary
2 petition for relief under chapter 11 petition of the Bankruptcy Code was filed against
3 Xyience, Incorporated, as Case No. BK-S-08-10049-mkn ("Involuntary Petition");
4

5 WHEREAS, on January 18, 2008, Xyience, Incorporated filed a voluntary petition
6 for relief under chapter 11 of the Bankruptcy Code, as Case No. BK-08-10474-MKN
7 ("Voluntary Case");
8

9 WHEREAS, the Petitioning Creditors seek to preserve the date of January 3, 2008
10 as the Petition Date in the Voluntary Case for the purpose of all actions preserved for the
11 Estate set forth in Sections 542, 543, 544, 545, 547, 548, 549, 550, 553(b) and 724(a) of
12 the Bankruptcy Code ("Avoidance Actions");
13

14 WHEREAS, Xyience, Incorporated seeks to avoid the cost and expense associated
15 with the requirement of seeking allowance and payment of gap claims pursuant to Section
16 502(f) of the Bankruptcy Code;

17 IT IS THEREFORE STIPULATED AND AGREED AS FOLLOWS:
18

19 1. The Petitioning Creditors will not seek an award of attorneys fees and costs
20 with respect to the filing of the Involuntary Petition.

21 2. Xyience, Incorporated will not seek an award of attorneys fees and costs
22 with respect to the filing of the Involuntary Petition.

23 3. The Involuntary Petition shall be dismissed, with prejudice.
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26 ///

1 4. In the Voluntary Case, the date of January 3, 2008 shall be used as the
2 Petition Date for the purpose of Avoidance Actions.
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4
5 FENNEMORE CRAIG, P.C.

GOLDSMITH & GUYMON

6 /s/ Laurel E. Davis
7 By _____
8 Laurel E. Davis
9 [Proposed] Counsel for Debtor

By _____
Marjorie A. Guymon
Counsel for Petitioning Creditors

10
11 **IT IS SO ORDERED.**
12

13 PROPOSED BY:
14

15 FENNEMORE CRAIG, P.C.

16 /s/ Laurel E. Davis
17 By _____
18 Laurel E. Davis

19 [Proposed] Counsel for the
20 Debtor and Debtor in Possession

21 ###
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23

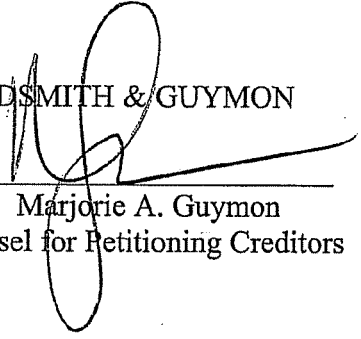
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1 4. In the Voluntary Case, the date of January 3, 2008 shall be used as the
2 Petition Date for the purpose of Avoidance Actions.

3
4
5 FENNEMORE CRAIG, P.C.

6 By _____
7 Laurel E. Davis
8 [Proposed] Counsel for Debtor

GOLDSMITH & GUYMON

By 
Marjorie A. Guymon
Counsel for Petitioning Creditors

9
10 **IT IS SO ORDERED.**

11
12
13 **PROPOSED BY:**

14 FENNEMORE CRAIG, P.C.

15 /s/ Laurel E. Davis
16 By _____
17 Laurel E. Davis

18 [Proposed] Counsel for the
19 Debtor and Debtor in Possession

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